

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

701 East Broad Street
Richmond, VA 23219

HECTOR ACUNA

Plaintiff

v.

Civil Action No. 3:10-cv-905

CHASE HOME FINANCE LLC

and

**FEDERAL NATIONAL MORTGAGE
ASSOCIATION**

Defendants

MOTION FOR LEAVE TO AMEND COMPLAINT

Pursuant to Section 15(a)(2) of the Federal Rules of Civil Procedure, Plaintiff Hector Acuna, by counsel, requests the leave of the Court to file Plaintiff's First Amended Complaint, a copy of which is attached hereto as Exhibit A. In support of such motion, Plaintiff states as follows:

PROCEDURAL STANCE

1. Plaintiff filed its original Complaint in Henrico County Circuit Court.
2. Defendants removed the case to this Court and filed their Motion to Dismiss December 21, 2010 [Docket 3].
3. Defendants filed their Answer to Plaintiff's Complaint January 21, 2011 [Docket 10].

4. By Order filed May 17, 2011 [Docket 29], the Court granted Defendants' Motion to Dismiss as to Counts I, II, and IV of the original Complaint, and denied Defendants' Motion to Dismiss as to Count III of the original Complaint.

MOTION FOR LEAVE TO AMEND

5. Plaintiff requests leave to amend the Complaint in the manner and for the reasons set forth in the following paragraphs.

6. Plaintiff desires to conform the Complaint to the Court's May 17, 2011 ruling by eliminating Counts I, II, and IV of the original Complaint.

7. Plaintiff desires to correct a factual misstatement made in the original Complaint. Plaintiff at the time of filing of the original Complaint believed that Defendant Chase Home Finance, LLC ("Chase") had failed to provide certain notices required under the federal Housing Affordable Modification Program ("HAMP"). During discovery, Chase produced two HAMP notices that Chase claims to have sent. Upon review, Plaintiff remembered having received one of the notices.

8. The Prayer for Relief in the original Complaint requested that the Court overturn the foreclosure sale that is the subject of the Complaint, but Count III of the Complaint, which is the Count remaining after the Court's May 17, 2011 Order, does not expressly mention overturning the foreclosure sale. Plaintiff wishes to clarify that overturning of the foreclosure sale remains a part of Plaintiff's prayer for relief.

9. Facts revealed during discovery have shown that certain damages requested by Plaintiff in the original Complaint are not supported, and Plaintiff desires to reduce its damage claim accordingly.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court:

A. Grant Plaintiff leave to file its First Amended Complaint.

B. Waive the requirement for filing of written briefs under Local Rule 7(F), as no novel issues of law are presented by this Motion.

Respectfully Submitted,

Hector Acuna, Plaintiff
By Counsel

CENTRAL VIRGINIA LEGAL AID SOCIETY, INC.

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Counsel for Hector Acuna

By: /S/ James D. Thornton
James D. Thornton (VSB #28013)

CERTIFICATE OF SERVICE

I, James D. Thornton, do hereby certify that the foregoing was served electronically through the Court's CM/ECF system this 23rd day of May, 2011 to:

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